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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEVIN WALKER

Case No.: C 07 06205 (TEH)

**Plaintiff.**

## JOINT CASE MANAGEMENT CONFERENCE STATEMENT

-VS-

22 CITY OF HAYWARD, OFFICER ART  
23 THOMS, OFFICER SCOTT LUNGER, and  
24 OFFICER ZACHARY HOYER, individually and  
in their official capacities; AMERICAN  
DISCOUNT SECURITY, and DAUD  
25 WARWDAK aka DAVID WARDAK

Date: April 21, 2008  
Time: 1:30 p.m.  
Department: 12

## Defendants

1           1. Jurisdiction.

2 **Plaintiff:**

3           All named parties are purportedly subject to the Court's jurisdiction pursuant to Title 28  
 4 of the United States Code Sections 1331 and 1343. There are no issues with respect to service on  
 5 or personal jurisdiction over the named defendants. Venue is not an issue. Plaintiff filed his First  
 6 Amended Complaint on April 4, 2008. Defendants have not answered yet.

7 **ADS Defendants:**

8           See City Defendants, infra.

9 **City Defendants:**

10          All named parties are purportedly subject to the Court's jurisdiction pursuant to Title 28  
 11 of the United States Code Sections 1331 and 1343. Defendants City of Hayward ("City"), Art  
 12 Thoms, Scott Lunger, and Zachary Hoyer (collectively "City defendants") filed a motion to  
 13 dismiss all state claims. Pursuant to a stipulation and Court Order all state claims plead against  
 14 City defendants were dismissed with prejudice. City defendants filed an answer in response to  
 15 plaintiff's remaining federal claims. Defendants American Discount Security and David Wardak  
 16 (collectively "ADS defendants") filed a motion to dismiss all claims. The Court granted the  
 17 motion in part, and denied it in part. The Court ordered plaintiff to file an amended complaint.

18          2. Substance of Action.

19 **Plaintiff's Claim:**

20          In the nighttime hours of December 9, 2005, Plaintiff, Kevin Walker and his friend, Jerry  
 21 Walker, both African-American males, went to the *Jack in the Box* restaurant at 1075 W.  
 22 Tennyson Road in the City of Hayward, California. Plaintiff and Jerry Walker were denied entry  
 23 by Defendant Daud Wardak, a security guard. The restaurant drive-thru window was open for  
 24 business at the time Plaintiff and Jerry Walker were denied entry. Plaintiff and Jerry Walker left  
 25 the front entrance to the restaurant and waited for their ride to arrive.

26          As Plaintiff was waiting with Jerry Walker, Defendant Wardak contacted the Hayward  
 27

1 Police Department and made a false report that three or four black males were causing a  
 2 disturbance in the parking lot of the Jack in the Box restaurant. Officers Thoms and Lunger of  
 3 the Special Duty Unit of the Hayward Police Department responded.

4       When Officers Lunger and Thoms arrived on scene, Defendant Wardak directed the  
 5 officers to Plaintiff and Jerry Walker, and wanted the officers to arrest them both for trespassing.  
 6 The officers did not conduct an independent investigation into the matter. The officers did not  
 7 ask either Plaintiff or Jerry Walker why they were in the area and did not advise them to leave the  
 8 area. Instead, the officers arrested Plaintiff and Jerry Walker. The officers assaulted and battered  
 9 Plaintiff. Plaintiff was taken to St. Rose Hospital in Hayward for medical treatment after he was  
 10 booked at the Hayward Police Department jail.

11       After Plaintiff's arrest, Defendant Wardak signed a written statement, apparently authored  
 12 by Officer Snell, stating, *inter alia*, that he summoned the police and arrested Plaintiff and Jerry  
 13 Walker for trespassing on Jack in the Box property. Defendant Wardak was identified as a  
 14 witness in the incident reports authored by Defendant police officers.

15       On or about December 12, 2005, the Alameda County District Attorney's Office filed  
 16 misdemeanor criminal charges against Plaintiff alleging violations of California Penal Code  
 17 Section 69 - Resisting a Peace Officer, Section 647(f)-Public Intoxication, and Section  
 18 12020(a)(4)-Carrying a Dirk or Dagger. The so-called dirk/dagger was a small box cutter issued  
 19 to Plaintiff by his employer with the employer's business information imprinted on it. Plaintiff's  
 20 case was tried before a jury in Alameda County in or around June 2007. Defendants Thoms and  
 21 Wardak testified on behalf of the prosecution. On or about June 15, 2007, the jury returned its  
 22 verdict acquitting Plaintiff of all charges.

23 **ADS Defendants' Claim:**

25       Jack-in-the-Box usually closes its restaurant at 10:00 p.m., leaving only the drive-through  
 26 window, designated solely for motor vehicle traffic, open. On December 9, 2005, at  
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1 approximately 11:00 p.m., ADS' employee, Daud Wardak ("Wardak"), was patrolling the Jack-  
2 in-the-Box premises. Kevin Walker ("Kevin") and Jerry Walker ("Jerry") attempted to enter the  
3 restaurant despite the restaurant being closed. Wardak informed Kevin and Jerry that the  
4 restaurant was closed. However, Kevin and Jerry continued to knock on the windows and curse  
5 at/verbally abuse Wardak and the Jack-in-the-Box manager inside. The Jack-in-the-Box  
6 manager, Sherry (last name unknown at this time) instructed Wardak to call the police. Once the  
7 police officers arrived, and Kevin and Jerry continued to remain on the premises, Wardak  
8 informed the police officers of the situation. Wardak had no other interaction with Kevin and  
9 Jerry. ADS and Wardak did not have any involvement in charging Kevin with resisting a peace  
10 officer, public intoxication and carrying a dirk or dagger. Wardak's only complaint was that  
11 Kevin and Jerry were trespassing on Jack-in-the Box's premises after restaurant business hours.  
12  
13 **City Defendants' Claim:**  
14

15 On December 9, 2005, at approximately 11 p.m., Kevin Walker ("Kevin") and Jerry  
16 Walker ("Jerry") trespassed at a Jack-in-the-Box, which was closed to pedestrian business. After  
17 Kevin was repeatedly directed to leave the premises by American Discount Security ("ADS")  
18 personnel, Kevin banged on the windows of the location, verbally abused Security personnel, and  
19 attempted to place an order from the drive-in window. Security personnel contacted the Hayward  
20 Police Department ("HPD") for a response. HPD officers attempted to detain the Walkers for  
21 investigation. The Walkers failed to comply with officer commands. Kevin refused to take his  
22 hand out of his pants pocket. Kevin physically resisted efforts to detain him. HPD officers used  
23 reasonable force to overcome Kevin physical resistance. Ultimately, Security personnel effected a  
24 citizen's arrest for trespass. HPD located an open box cutter in Kevin's pants pocket. HPD  
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1 charged Kevin with resisting arrest, and possession of a dirk or dagger, inter alia. Jerry plead to  
 2 the trespass charge. On June 2007, Kevin was acquitted at jury trial.

3 City defendants assert that the involved officers utilized reasonable force in their self-  
 4 defense and to effectuate the detention and arrest of Walker. Moreover, defendants further assert  
 5 that they are entitled to qualified immunity, inter alia.

7       3. Identification of Issues.

8       **Plaintiff:** Plaintiff claims that Defendants violated his civil rights pursuant to 42  
 9 U.S.C. § 1983 and that section 1983 liability extends to Defendants ADS and Wardak  
 10 (collectively “ADS defendants”) under a joint action theory. Plaintiff contends that defendants  
 11 did not have legal justification to detain or arrest him and defendants used excessive force in  
 12 arresting him. Plaintiff has also asserted numerous pendent state law causes of action against  
 13 ADS Defendants.

14       **ADS Defendants:** The principal issues in dispute are:

- 15           a.      Whether Wardak was acting under “color of law”.
- 16           b.      Whether the decision to prosecute Kevin for resisting a peace officer,  
                  public intoxication and carrying a dirk and dagger can be attributed to  
                  Wardak and ADS , for purposes of Plaintiff’s malicious prosecution and  
                  abuse of process claims.
- 17           c.      Whether Wardak’s conduct in summoning the police under the  
                  circumstances was reasonable.
- 18           d.      Whether Wardak’s actions can be considered “threats, intimidation or  
                  coercion”, to constitute a claim under Civil Code, Section 52.1.

- 1 e. Whether Plaintiff is entitled to punitive damages.
- 2 f. Whether Wardak's actions can be considered a violation of Civil Code,
- 3 Section 43.
- 4 g. Whether Warkak or ADS committed any acts of violence or threats of
- 5 violence against Plaintiff, in violation of Civil Code, Section 51.7.

7 **City Defendants:** The principal issues in dispute are the following: whether probable  
 8 cause existed for the arrest; whether the force used by the defendant police officers was  
 9 reasonable; whether defendant police officers are entitled to qualified immunity; whether  
 10 plaintiff's damages were caused by City defendants' action; whether plaintiff is entitled to an  
 11 award of punitive damages.

13       4. Narrowing of Issues.

14       **ADS Defendants:** Same as above.

15       **City Defendants:** That probable cause existed for the arrest; that the force used by the  
 16 defendant police officers, if any, was reasonable; that defendant police officers are entitled to  
 17 qualified immunity; that plaintiff's damages were caused by City defendants' action; that  
 18 plaintiff is entitled to an award of punitive damages.

19       5. Motions

20       **Plaintiff:** ADS defendants have not filed an answer as yet.

21       **ADS Defendants:** ADS defendants filed a motion to dismiss all claims against them.  
 22 The Court granted Defendant's motion in part and denied it in part. Defendant ADS has not filed  
 23 an answer as yet. Motion for Summary Judgment/Summary Adjudication of issues above.

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1           **City Defendants:**     Absent agreement, dispositive motion re above.

2           6.   Relief. Plaintiff prays for the following damages according to proof: general  
3   damages, special damages, punitive damages, statutory damages, and penalties.  
4

5           7.   Evidence Preservation/Disclosures/Discovery.

6           **Plaintiff:** Plaintiff believes that the surveillance cameras installed in the premises of Jack  
7   in the Box at the time of the incident may have recorded the encounter between Plaintiff and  
8   defendants. Plaintiff also believes that HPD may be in possession of evidence seized from  
9   Plaintiff and evidence developed thereafter for purposes of Plaintiff's criminal prosecution.  
10   Additionally, Plaintiff is informed and believes that there are numerous documents, including  
11   dispatch tapes and logs, and electronic and paper documents relevant to Plaintiff's case or likely  
12   to lead to the discovery of relevant evidence in the custody and control of defendants.  
13

14           **a. Disclosures.** The parties plan to comply with the Court imposed deadline for  
15   initial disclosures.

16           **b. Discovery.** Discovery has not commenced as yet. The parties anticipate  
17   conducting discovery as per the protocol defined in the FRCP. Given the number of Defendants  
18   in the lawsuit, Plaintiff anticipates taking a total of twenty five (25) depositions. The parties also  
19   anticipate serving written discovery including but not limited to interrogatories, request for  
20   production of documents, request for admissions, and subpoena duces tecum prior to the  
21   discovery cut-off date. The deadline for expert witness discovery will be as set forth in FRCP  
22   Rule 26.

23           **ADS Defendants:**     See City defendants, infra.

24           **City Defendants:**     Defendants plan to comply with the Court imposed deadline for  
25   initial disclosures. Defendants anticipate conducting discovery as per the protocol defined in the  
26   FRCP including taking the depositions of all parties, and third party witnesses. In the event that  
27

1 the number of witnesses to be deposed exceeds the maximum under the FRCP, defendants shall  
2 seek relief from the Court. In this regard, if the Court grants plaintiff leave to conduct  
3 depositions in excess of the FRCP protocol, in the interests of fairness, defendants respectfully  
4 request that they also be granted similar leave to conduct depositions in excess of the FRCP.  
5 Defendants also anticipate serving written discovery including but not limited to interrogatories,  
6 request for production of documents, request for admissions, and subpoena duces tecum prior to  
7 the non-expert discovery cut-off date. Defendants anticipate that initial disclosures shall be made  
8 on or before the initial case management conference.

9       8. ADR. The parties stipulated to early mediation pursuant to the Court's ADR  
10 program.

11       9. Trial. The parties anticipate a ten-day trial, including jury selection.

12       10. Related Cases. None.

13       11. Proposed Schedule:

14       Plaintiff: Plaintiff proposed that a discovery schedule be established after the parties  
15 early mediation, which will be conducted within the next 90 days.

16       ADS Defendants: ADS defendants propose that this matter be reset for a further  
17 case management conference 120 days after the court issues an Order in relation to ADS  
18 defendants' Motion to Dismiss.

19       City Defendants: It is premature to set a schedule until such time that the ADS  
20 defendants file an answer. In order to minimize the costs and attorneys fees associated with  
21 discovery, and to maximize settlement authority, at the outset, City defendants prefer to mediate  
22 the dispute. In the interests of judicial economy, City defendants propose that this matter be reset  
23 for further case management conference 120 days after ADS defendants file an answer to  
24 plaintiff's amended complaint which will allow the parties to complete the mediation process in  
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1 the interim.

2       12. Disclosure of Non-party Interested Entities or Persons. Plaintiff filed his required  
3 disclosure pursuant to Civil Local Rule 3-16 on March 3, 2008. Pursuant to Civil Local  
4 Rule 3-16, Plaintiff certifies that as of this date, other than the named parties, there is no such  
5 interest to report. City defendants are exempt from filing the Disclosure of Non-party Interested  
6 Entities or Persons pursuant to Local Rule 3-16.  
7

8  
9       DATED: April 11, 2008

LAW OFFICES OF JIVAKA CANDAPPA

10  
11      By:     /s/  
12           JIVAKA CANDAPPA  
13           Attorney for Plaintiff Kevin Walker

14       DATED: April 11, 2008

PRINDLE, DECKER, & AMARO LLP

15  
16      By:     /s/  
17           JAMES G. MURRAY  
18           Attorney for American Discount Security  
19           and Daud Wardak

20       DATED: April 11, 2008

MICHAEL S. LAWSON, City Attorney

21  
22      By:     /s/  
23           RANDOLPH S. HOM,  
24           Assistant City Attorney  
25           Attorneys for Defendants City of Hayward,  
26           Art Thoms, Scott Lunger, and Zachary  
27           Hoyer